49
36 pgs

MT LEGISLATIVE HISTORY

Chapter 177 1963

Bill H _____ S 99 Original bill & hist. ___C

H. Committee on Business & Industry			S. Committee on Banking & Insurance		
Hearing Date(s)	Feb 15	✓C	Hearing Date(s)	Jan 30	✓C
	Feb 20	✓C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C		Jan 30	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

COURTESY OF THE State Law Library of Montana

MINUTES OF MEETING

BANKING AND INSURANCE COMMITTEE

A meeting of the committee on Banking and Insurance was held in Room 404, State Capitol, January 30, 1963, at 12 noon with Senator Beley, Chairman.

Roll call found all members present excepting Senators Bovey, Jensen, and Lehrkind. (Senators Lehrkind and Bovey came in late after roll call)

Order of business will be a hearing on Senate Bill #99.

SENATOR GERARD: I am one of the members who introduced this bill and feel that it will greatly effect this state. I do not wish to make a statement on this bill, but would like to introduce Jack Luxan, Attorney at Helena and Attorney for the Montana Housing Association, which has up to 50 member banks and other who are concerned with the housing industry and the people of Montana.

JACK LUXAN: I will turn this meeting over to the various members here who represent the Proponents to this bill.

CLARENCE SULLIVAN: (see attached copy of speech)

R. C. WETHERALL: (see attached copy of speech)

McDONNELL: With the Empire Savings and Loan Association in Bozeman do you have money to loan in that community?

WETHERELL: We have more money now than we need at this time, but we must keep ahead for future use.

McDONNELL: Why do you loan on homes and not on farms and ranches?

WETHERELL: I think the time will come when this will not be a problem but in times of depression it was difficult. We do not have a problem on farm homes as we do not give farm loans.

JACK LUXAN: (see attached copy of speech)

The following read letters supporting this Senate Bill #99 and are attached to these minutes.

Montana Building Chapter, Associated General Contractors
Montana Title Association
First Montana Title Insurance Company
Montana Association of Real Estate Boards

Among organizations other than above supporting this bill are: Va, PERS, TRS and the FHA. Attached is a sheet of paper with the names of those present.

After a few questions by the committee to the proponents the proponents were excused.

There was no one present representing the opponents.

Senator McDonnell said he would vote against the bill as he feels that it will only help the lendors and not the borrowers.

1/30/63
Banking and Insurance Meeting

A motion was made by Senator Lehrkind and seconded by Senator Hafferman that Senate Bill #99 Do Pass. Two voted against the motion, the rest voted for it. Motion carried.

Senator McDonnell was asked to draw up the amendments to Senate Bill #9

Motion by Senator Lehrkind and seconded by Senator Bovey that the meeting adjourn. Meeting adjourned at 1:05 P.M.

Beley

Senator Beley

January 31, 19 63

MR. PRESIDENT:

We, your Committee on BANKING AND INSURANCE

having had under consideration SENATE Bill No. 9,

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE OPTIONAL USE OF [illegible] INDENTURES AS SECURITY INSTRUMENTS IN THE FINANCING OF SMALL TRACTS [illegible] THREE ACRES OF LAND, OR LESS; PROVIDING FOR THE CONVEYANCE OF [illegible] TO SECURE THE PERFORMANCE OF AN OBLIGATION AND FOR RE-CONVEY[illegible] MANCE; CONFERRING A POWER OF SALE UPON THE TRUSTEE UNDER [illegible] AND PRESCRIBING THE TIME AND MANNER IN WHICH SUCH POWER MAY [illegible] PROVIDING FOR THE SALE OF THE PROPERTY AT TRUSTEE'S SALE IN [illegible] DEFAULT; PRESCRIBING THE FORM OF NOTICE OF SALE AND PROVIDING [illegible] RECORDATION, MAILING, POSTING AND PUBLICATION OF NOTICE OF SALE [illegible] FOR TRUSTEE'S DEED AND THE FORM AND EFFECT THEREOF; PROVIDING [illegible] DISPOSITION OF THE PROCEEDS OF SALE; DISALLOWING DEFICIENCY JUDG[illegible] CERTAIN CASES; PROVIDING FOR POSSESSION FOLLOWING SALE; DEFINING [illegible]

Respectfully report as follows: That Bill No.

AND EXPENSES CHARGEABLE TO THE GRANTOR OF A TRUST DEED; PROVIDING FOR DISCONTINUANCE OF FORECLOSURE BY ADVERTISEMENT AND SALE; RELATING TO THE APPLICABILITY OF MORTGAGE LAWS TO TRUST INDENTURE TRANSACTIONS; AMENDING SECTIONS 93-6005, 93-6006, AND 93-6007, R.C.M. 1947, RELATING TO SALES OF REAL ESTATE UNDER POWERS OF SALE IN MORTGAGES AND RIGHTS OF REDEMPTION, TO INCLUDE THEREFROM TRUST INDENTURES AS DEFINED IN THIS ACT; AND PROVIDING A SHORT TITLE, A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE."

BEST COPY AVAILABLE

MONTANA BUILDING CHAPTER

ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.
GRANITE BLOCK · · HELENA, MONTANA

GEORGE A. PIRRIE, JR.
SECRETARY-MANAGER

P. O. BOX
PHONE 442

January 30, 1963

TO: THE MEMBERS OF THE SENATE BANKING AND INSURANCE COMMITTEE OF THE 38th MONTANA LEGISLATURE

Gentlemen:

The Montana Building Chapter of the Associated General Contractors of America whose membership is composed of general building contractors and their suppliers and sub-contractors who perform a great amount of the contract construction in Montana each year.

The Members of our Association offers our support of Senate Bill No. 99 pertaining to the Small Tract Financing Act of Montana because presently investors have learned that in Montana that a liquidation of a mortgage loan invariably requires prosecution of an expensive law suit and involves delays of up to 2 years following a borrowers default. These factors tend to adversely effect interest rates and other terms upon which mortgage money is available and greatly reduce the flow of this fund into Montana. This definitely hurts the volume of residential and small commercial construction in the state and since many of our Association Members businesses require this type of work we urge the passage of the Senate Bill No. 99.

We further feel that by enacting this bill that investment money will stabilize and thus eliminate periods of "tight-money" as there was 18 to 24 months ago. This again is a factor that encourages residential and small commercial construction and add to benefit the general economy of Montana.

Very truly yours,

GEO. A. PIRRIE, JR.
Secretary-Manager

GAP*pg

CLASS OF SERVICE

This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION

TELEGRAM (07)

01 (4-60)

W. P. MARSHALL, PRESIDENT

SYMBOLS

DL = Day Letter

NL = Night Letter

LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

PRA148 KA21

K LBA053 NL PD=LB KANSAS CITY MO 28= 1963 JAN 28 PM 3 1

H J LUXAN, COUNSEL MONTANA HOME ASSN=

UNION BANK BLDG HELENA MONT=

THIS COMPANY HAS OPERATED IN STATES HAVING A TRUST DEEL LAW. NO UNUSUAL PROBLEMS HAVE ARISEN IN ISSUING POLICI BASED ON TITLES INVOLVING NON-JUDICIAL FORECLOSURES IF APPLICABLE STATUTORY PROVISIONS ARE COMPLIED WITH IN FORECLOSURE=

KANSAS CITY TITLE INSURANCE CO TARPLEY=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

OSCAR CALLANT
PRESIDENT
HARLOWTON, MONTANA

F. B. WEED
VICE PRESIDENT
HELENA, MONTANA

K. D. SMITH
SEC'Y-TREAS.
LEWISTOWN, MONTANA

Montana Title Association

Ja . 29, 1963

Statement of F. B. Weed in support of S. B. 99

My name is F. B. Weed, I reside in Helena, Montana and am Vice President and Manager of the Helena Abstract and Title Company.

I am Vice President of the Montana Title Association, whose membership consists of approximately 175 Abstracters, representing approximately 60 abstract plants throughout the State of Montana.

The Montana Title Association has gone on record as favoring S. B. 99. This bill will simplify and expedite mortgage lending and foreclosure proceedings and will stimulate home loan and home sale transactions. Such an increase in the volume of that type business will benefit our business.

The out of court foreclosure procedures, provided by S. B. 99, are simple, practical and workable.

No difficulty should be experienced with the mechanics of this bill.

Abstracters are in an especially good position to serve as Trustees in Trust Indenture transactions, by reason of their experience in title matters and the title records and other necessary facilities which they maintain.

Our group feels that it would be desirable to provide in the Bill, that Trustees, as an additional qualification, should reside in, or maintain a business office in, the County in which the property in question is situated.

The Committee's favorable consideration of Senate Bill 99 is requested.

Respectfully submitted

F. B. Weed
Vice President
Montana Title Association

BEST COPY AVAILABLE

FIRST MONTANA TITLE INSURANCE COMPANY

TITLE INSURANCE ABSTRACTS

FRANK A. WHETSTONE
PRESIDENT
HARRY H. SCHLEE
EXECUTIVE VICE-PRESIDENT

17 - 5TH ST. NO., GREAT FALLS
PHONE

January 28, 1963

Mr. H. J. Luxan
Counsel for Montana Home Financing Association
P. O. Box 1144
Helena, Montana

Dear Mr. Luxan

In support of Senate Bill Number 99 relating to Trust Indentures, please be advised that the First Montana Title Insurance Company and its affiliate offices heartily endorse the measure.

As a member of the Montana Bar Association I can personally endorse this measure and firmly believe that the existing mortgage and foreclosure laws will definitely handicap the housing industry when money from outside sources becomes tight.

Sincerely,

H. H. Schlee
Executive Vice President

HHS /jd

Active Members Affiliated with the National Association of Real Estate Boards and the Montana Association of Real Estate Boards

Realtors

MONTANA ASSOCIATION of REAL ESTATE BOA

Also, Montana Association of Realtors

Executive Secret
Tom Maddox
P. O. Box 123
Helena, Montana
Telephone 442-

30 January 1963

President
BRUCE R. NELSON
10 - 12th South
Great Falls

Vice President
KENNETH R. FLYNN
Havre

Secretary-Treasurer
CARL C. PAYNE
Great Falls

2nd Vice President
J. R. (Bob) CLARK
Missoula

Directors
MEL C. CARBIS
Helena
ARDEN J. PETERSON
Great Falls
PETER YEGEN, JR.
Billings
DONALD F. NELL
Livingston
[illegible] MITCHELL
Miles City
TED H. HORRAS
Great Falls
H. T. KARLSGODT
Polson

And Immediate
Past President
DONALD R. LEE
Billings

Legislative Chairman
TOM MATHER
Great Falls

Senate Committee Having Under Consideration Senate Bill 99:

Gentlemen:

The Montana Association of Real Estate Boards appeared for this public hearing on Senate Bill 99 in support and hopeful of its enactment.

In Montana there is a lack of adequate financing on reasonable terms, and particularly during periods of tight money. This has had a crippling affect on real estate sales.

Montana must compete with other states for mortgage money. Montana's competition or its competitive position is not satisfactory because of its outmoded mortgage laws. These laws not only discourag investors, they place a definite drag upon sales of homes.

The Montana Association of Real Estate Boards joins with other segments of the housing industry in urging favorable consideration of Senate Bill 99.

Trust indentures have worked well in other states. This measure will bring Montana's home financing laws up to date and place our state in a more advantageous position to compete for adequate moneys. It will benefit both the home purchasers and home sellers by reducing their financing costs.

This statement is submitted by the President of the Montana Association of Real Estate Boards, Bruce A. Nelson, of Great Falls.

Bruce A. Nelson

9

COMMITTEE ON BANKING AND INSURANCE

MONTANA STATE SENATE

BEST COPY AVAILABLE

APPEARANCES IN SUPPORT OF SB 99
Committee Hearing, January 30, 1963

Name of Firm or Association	Name and Title of Representative
Montana Home Assn.	N. J. Lucan, Helena, Counsel
Montana Title Assn.	F. B. Weed, U.P. - Helena
Veterans administration	Chris C. Brown - Ft Harrison
Montana Home Assoc.	R. E. Lockwood, Pres.
Public Employees Retirement System	M. J. Hughes, Attorney
Home Builders Assoc.	[illegible] Pres.
GR FALLS NAT'L BANK	HERB McCULLAS VICE PRES
Land Title Guaranty Co	Elbert Brown
Hunt Court Co.	Earl H. Hunt
Empire Savings & Loan Assn	Bozeman. R. Weitherell V-P.
Mont Bldg Chapter of The Associated General Contractors	George H. Irvie Jr Sec. Mgr, Helena [illegible] Secretary, Mont Chapter
TEACHERS' RETIREMENT SYSTEM	
First Federal Sav. & Loan Association of Hunt Bldg.	Paul O Johnson, Pres
Security Bank & Trust, Bozeman	Earl J. Williams V.P
Montana Assn of Real Estate Boards	Bruce A. Nelson Pres
Montana Building & Loan League	Chas W. Smith, Attorney
Fritz Ward, Vice Pres.	Abstract & Title Guarantee

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. MY NAME IS CLARENCE SULLIVAN. I AM A VICE PRESIDENT OF THE UNION BANK AND TRUST COMPANY OF HELENA, MONTANA, AND ALSO PRESIDENT OF THE MONTANA HOME ASSOCIATION.

SENATE BILL NO. 99 REPRESENTS THE CULMINATION OF A NUMBER OF YEARS OF THOUGHT AND WORK BY MANY PEOPLE INTERESTED IN THE PROGRESS OF MONTANA. AMONG THOSE OF US WHO HAVE WORKED ON THIS BILL ARE REAL ESTATE MORTGAGE LENDERS WHO DAILY FACE THE MANY PROBLEMS OF FINANCING RESIDENTIAL AND BUSINESS PROPERTIES. ONE OF THE BIGGEST PROBLEMS IN OUR BUSINESS HAS BEEN THE AVAILABILITY OF MORTGAGE INVESTMENT FUNDS.

AS WILL BE SHOWN LATER IN MORE DETAIL OUR PRESENT MORTGAGE LAWS HAVE WORKED TO SERIOUSLY HAMPER THE FLOW OF MORTGAGE INVESTMENT MONIES INTO OUR STATE. WE MUST RELY ON OUT OF STATE CAPITAL TO FINANCE OUR GROWTH. WE MUST MAKE THE INVESTMENT CLIMATE COMPETITIVE WITH OTHER AREAS TO ATTRACT THESE NEEDED FUNDS. TO DO SO WE HAVE TO MODERNIZE OUR MORTGAGE LAWS. THIS WOULD BE ACCOMPLISHED BY PASSAGE OF SENATE BILL NO. 99.

THE SUCCESSFUL PASSAGE OF THIS BILL THROUGH THE LEGISLATURE IS OF MAJOR ECONOMIC IMPORTANCE TO THE STATE. FOR THE NATION AS A WHOLE THE HOME BUILDING INDUSTRY ACCOUNTED FOR $60 BILLION OF THE GROSS NATIONAL PRODUCT IN 1962 ACCORDING TO BUSINESS WEEK. THE ANNUAL RATE OF 1 TO 4 FAMILY HOUSING STARTS AS REPORTED

MONTHLY BY THE CENSUS BUREAU IS USED AS ONE OF THE MORE IMPORTANT ECONOMIC INDICATORS BY ECONOMISTS. THE INDUSTRIES IMPORTANCE TO THE ECONOMY IS FURTHER EMPHASIZED BY THE WEIGHT GIVEN TO IT BY THE PRESIDENT'S ECONOMIC ADVISORY COUNCIL AND BY THE NUMBER OF BILLS ACTED UPON BY THE NATIONAL CONGRESS FOR PROMOTION OF THE INDUSTRY. TWO YEARS AGO THE PROGRESS OF THE OMINOUS HOUSING BILL THROUGH CONGRESS WAS CAREFULLY WATCHED BY THE NATIONS NEWS MEDIA. THE ECONOMY OF MONTANA IS EQUALLY EFFECTED BY THE PROGRESS OF THE HOUSING INDUSTRY.

THE CONSTRUCTION OF A HOUSE USES MANY TALENTS OF LABOR AND MANY KINDS OF MATERIAL. EXCLUSIVE OF LAND, A STANDARD THREE BEDROOM HOME WILL USE $6,000 to $8,000 WORTH OF MATERIAL AND $8,000 to $10,000 WORTH OF LABOR. NOT THE LEAST OF THE MATERIALS GOING INTO A HOUSE IS LUMBER. OUR STATES LUMBER INDUSTRY IS STRONGLY DEPENDENT ON THE HOUSING INDUSTRY. EVERY DOLLAR OF LABOR PAID FLOWS DIRECTLY INTO THE EVERYDAY ECONOMY OF LIVING. A MORE STABILIZED GENERAL ECONOMY CAN BE GAINED BY AN EQUAL STABILIZATION OF THE FLOW OF MONEY INTO MORTGAGE INVESTMENTS.

OUR PRESENT LAWS CAUSE MONTANA TO BE ONE OF THE FIRST AREAS CUT OFF FROM MORTGAGE MONEY DURING PERIODS OF TIGHT MONEY AND ONE OF THE LAST AREAS TO BE BROUGHT BACK INTO THE MARKET WHEN MONEY LOOSENS. HOUSING THUS IS ON A FEAST OR FAMINE BASIS WITH THE RESULTING SERIOUS EFFECTS ON THE STATES ECONOMY.

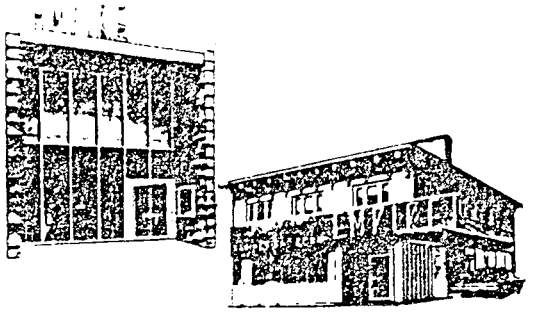
SENATE BILL NO. 99 WOULD HELP TO LEVEL OUT THE FAMINE PERIODS CAUSED BY CHANGES IN MANY MARKETS. DURING PERIODS OF TIGHT MONEY STATISTICS SHOW SOME MONEY CONTINUES TO FLOW INTO THE AREAS HAVING MORE FAVORABLE MORTGAGE CONDITIONS THAN OURS. IN THESE MORE FAVORABLE MORTGAGE AREAS THE RATES PAID FOR MONEY BY THE BORROWERS IS GENERALLY LOWER BECAUSE OF THE MORE AMPLE FLOW OF FUNDS THAN WHAT OUR CUSTOMERS HAVE TO PAY.

MONTANA'S BUSINESS OWNERS HAVE LONG HAD DIFFICULTY IN OBTAINING LONG TERM FINANCING AT REASONABLE RATES. WE HAVE BEEN ADVISED BY SEVERAL EASTERN MORTGAGE INVESTORS THAT UPON PASSAGE OF A BILL SUCH AS WE ARE PRESENTING HERE THEY WILL ENTERTAIN APPLICATIONS FOR REAL ESTATE LOANS ON LOCALLY OWNED BUSINESS PROPERTIES. THIS, OF COURSE, CAN BE A MATERIAL BOOST TO THE GENERAL WELFARE OF OUR STATES ECONOMY.

ANOTHER FACTOR THAT SHOULD BE MENTIONED HERE IS THAT EVERY NEW HOME OR PRIVATE BUILDING ERECTED IN OUR STATE HELPS TO SPREAD THE TAX BASE FOR ALL OF US.

OUR STATE IS GROWING AND TO HELP IT CONTINUE TO GROW AND PROSPER WE FEEL IT IS IMPERATIVE THAT OUR MORTGAGE LAWS BE UP DATED TO MEET TODAYS DEMANDS. WE FURTHER FEEL THIS CAN BEST BE ACCOMPLISHED BY THIS LEGISLATION. WE URGE YOUR CAREFUL CONSIDERATION AND FAVORABLE RECOMMENDATION OF SENATE BILL NO. 99.

THANK YOU.



ROBERT C. WETHERELL, VICE PRESIDENT

EMPIRE
SAVINGS AND LOAN ASSOCIATION
AGENCY
35 EAST MENDENHALL STREET
BOZEMAN, MONTANA

Room 4 - Supreme Co. Building

January 30, 1963

MONTANA HOME ASSOCIATION

Statement of R. C. Wetherell
In Support of

SENATE BILL #99

Mr. Chairman:
Members of the Banking and Finance Committee:

Gentlemen:

I am R. C. Wetherell from Bozeman, Montana, along with others I speak on behalf of th Montana Home Association. For the immediate past fifteen years, I have been active in the mortgage business with the Bozeman office of Empire Savings and Loan Associatic where I am now Vice-President and Managing Officer.

For eighteen years prior to my connection with Empire I was a mortgage loan agent for the Northwestern Mutual Life Insurance Company of Milwaukee, Wisconsin.

Briefly - In Montana:

Banks are restricted by Law to making long term real estate loans aggregating no more than 60% of their time and savings deposits.

Savings and loan associations have no other source of funds than savings accounts and

EACH ACCOUNT INSURED TO $10,000

accounts.

Therefore, the available long term real estate money (from institutions) in Montana is limited by the amount of the aggregate savings dollars.

Unfortunately Montana is the victim of a squeeze play. Montana is growing and the housing demand is rapidly increasing thereby creating a growing demand for financing. The aggregate savings dollars in Montana do not grow as rapidly as the demand for long term real estate loans.

Badson Jan 10th - check the date line -

Look at the Wall Street Journal and U. S. News and World Report ads from California institutions offering 4.75% and 4.8% interest for savings dollars. Even in Salt Lake City 4.5% and 4.6% is being paid and the T.V. ads cover Montana.

Montana is losing savings dollars to those areas. In our own institution we have lost $132,000.00 since January 1, 1963, which we can trace to those areas.

In addition to this loss of savings dollars the savings business is very cyclical. In periods of tension or depression the savings aggregate builds up rapidly while during the same time demand for real estate loans falls off. Then when the tension has eased the savings dollars are withdrawn for re-entry of the stock market and for spending of all sorts. The recovery period then sees the demand for long term real estate loans grow by leaps and bounds. Again, the old law of supply and demand.

In short, Montana needs a steady flow of real estate mortgage money.

How can this be accomplished? The money market is still in the East where the large savings banks and insurance companies accululate a more uniform cash flow which

needs to be invested. We need the availability of those funds which can be had under conditions desirable to such investors.

The large insurance companies pick their states in which to invest - I know this becaus of my past connection which required my negotiating the purchase of mortgages in various areas. You see, I have experienced both the originating of and the purchasing of mortgages.

The large investors shy away from Montana because of its antiquated and inequitable foreclosure laws. These laws unneccessarily increase the risk and cost of doing busine in Montana.

The Montana real estate mortgage market needs the outlet which the Eastern market affords but which we do not have under present setup.

This bill, Senate #99, will open the door for ample funds when and as needed in Montan

The Bill would be equitable and fair to all concerned to borrowers and lenders alike and has the following salient features:

1. The use of a Trust Indenture is optional,
2. Does not apply to farm nor ranch mortgages where there still may remain some sound and logical reasons for long term redemption period.
3. The Trust Indenture protects the borrower by permitting him to reinstate himse by paying up the delinquencies plus costs prior to foreclosure which is a much more reasonable expectation than that under existing law of having to pay entire loan in full plus all accruals and costs after foreclosure.
4. Foreclosure costs are inveriably passed on to the borrower and would be much lower than under the existing law.

5. The new Bill will protect the borrower against deficiency judgment.

6. Competition will be more active and the borrower can shop for a more attractive interest rate, term and desirable institution.

7. This Bill will benefit the borrower, the lender, the seller, the buyer, the material man and trades people, real estate brokers and abstract and title people.

I urge that you label Senate Bill #99 -- DO PASS--

Thank you

My name is H. J. LUXAN. I am a practicing lawyer residing in Helena. I appear in support of Senate Bill 99 on behalf of the MONTANA HOME ASSOCIATION. The membership of this association includes the mortgage lending officers of upward of 50 banks and savings and loan associations throughout Montana, and other individuals and firms directly interested in Montana's residential housing industry.

The importance of the housing industry to the economy of our nation and state cannot be over-emphasized. The inability of Montana to generate and retain within its borders funds sufficient to meet the demand for home financing has already been demonstrated. Our heavy reliance upon eastern banks, insurance companies and other institutional investors for mortgage money is a fact of life. Yet the flow of such funds into our state is impeded, and the expansion of our housing industry is handicapped, by reason of the existence of antiquated and cumbersome mortgage laws. What are the objectionable features of these laws and what can be done to modernize them? For an excellent analysis of the mortgage laws not only of Montana but of the other states, I would commend to your attention an article by David A. Bridewell which appears in Vol. 5, p. 545 of the Duke University publication "Law and Contemporary Problems" which is available in our own law library. The article is entitled "The Effects of Defective Mortgage Laws on Home Financing" and in it the author classifies the various states on the basis of the effect of their mortgage laws on the investment decisions of mortgage lenders, into three classes as follows:

BEST COPY AVAILABLE

the time required in most instances is short.

BEST COPY
AVAILABLE

Class II

Those in which the cost of foreclosure is high and the time to foreclose in many instances is unnecessarily long.

Class III

Those where the cost of foreclosure is not only high and the time to foreclose in many instances unnecessarily long, but where there is also a period of redemption after sale during which in most cases the mortgagor is entitled to possession of the property.

Mr. Bridewell's studies caused him to conclude that states in the first classification enjoy a tremendous advantage in attracting mortgage funds for home financing, while those in third classification are seriously handicapped in attracting mortgage funds. Unfortunately, Montana, by reason of its unsatisfactory mortgage laws, falls into the third classification. Mortgage investors shy away from our state because they have learned from experience

1. That the liquidation of a Montana mortgage loan in the event of default invariably requires the prosecution of a law suit.
2. That in Montana costs and expenses of foreclosure are inordinately high, frequently amounting to 10% of the loan balance, or more.
3. That the Montana mortgage investor must wait for at least 15 months, and often as long as 18 months, after the commencement of foreclosure before he can recover his investment, due to the statutory one year right of redemption granted to the borrower.
4. That Montana law gives the borrower the right to possess the property during the period of redemption

for taxes, insurance and maintenance frequently prove unrecoverable, either in whole or in part.

These then are the features of the Montana law which tend to make mortgage money either unavailable in sufficient quantity, or available only on terms less favorable to the borrower than are available in other states having more equitable laws. With respect to mortgage laws like those on Montana's books, Mr. Bridewell has this to say in his article:

> "A final result of these uneconomic statutes * * * has been to impede the flow of mortgage money across state lines, thereby indirectly allowing high interest rates to remain in effect in those states where the demand for such money was greater than the supply * * *.
>
> "Such costly, time consuming and unnecessary mortgage and foreclosure procedures are a bitter paradox, since they benefit neither the mortgagor nor the mortgagee, and can be justified from no standpoint. * * *
>
> "Instead of safeguarding the mortgagor, many of the existing procedures have saddled him with additional charges and made more unfavorable the terms of his mortgage loan."

BEST COPY AVAILABLE

Mr. Bridewell's article was published in 1938, but his observations as to the effect on home financing of mortgage laws like Montana's are as valid now as when they were made. In the interim since 1938 many states have acted to modernize their mortgage and foreclosure laws, some through the adoption of trust indenture legislation similar to Senate Bill No. 99. Western states which in just the past few years have adopted such legislation include Idaho, Oregon and Utah. Senate Bill No. 99 is patterned largely after the Utah Act which is considered to be among the best.

What is a trust indenture and how does it work? Your attention is directed to the following features of Senate

form and in method of enforcement. Instead of a conveyance from the borrower to the lender, as in the case of a mortgage, the borrower conveys a defeasible legal title to a third party, called the trustee, who then holds it for the benefit of the lender until the loan is repaid. Thereupon the trustee reconveys the title to the borrower.

2. The trust indenture confers upon the trustee a power of sale exercisable in the event of default. Clothed with this authority, the trustee is in a position, without prosecuting a lawsuit, to advertise the property for sale and to sell it at public auction to the highest bidder. Under the bill, the borrower and all other parties having an interest in the property, are given at least 60 days advance notice of the sale by certified mail, by posting of notice on the property and by publication in the newspapers.

3. The borrower is accorded the right at any time before sale to reinstate the loan simply by paying the delinquent installments and any costs already incurred in advertising the property.

4. In the event the borrower does not reinstate the loan and the property is actually sold, the purchaser acquires a good title, free of any right of redemption, and with the right to take possession ten days after the sale. The bill prohibits the lender from taking a deficiency judgment against the borrower in the event the proceeds of sale are not

BEST COPY AVAILABLE

the sale of the property, first to the payment of expenses and costs of sale, second to payment of principal and interest due on the obligation to the lender, with any overplus being returned to the borrower. The bill limits the fees which may be charged to the borrower in the event of the foreclosure sale of his property, to five per cent of the balance due on the obligation - the equivalent of a real estate broker's commission on the sale of real estate.

BEST COPY AVAILABLE

6. Under the bill a trust indenture could be used on an optional basis but only in transactions involving three acres of land, or less.

These then are the mechanics of a trust indenture transaction. What are the advantages? It will be appreciated, upon reflection, that trust indenture legislation represents a practical and equitable compromise of the interests of both the lender and the borrower:

1. The bill provides a simple and inexpensive, out-of-court method of foreclosure.
2. By eliminating the necessity of litigation and by eliminating the one-year post-sale right of redemption, the bill allows the lender an election to realize more quickly on his security so that his capital can again be returned to productive investment channels.
3. The bill provides substantial protection to the borrower by guarantying him the right, exercisable at any time during a period of at least 60 days prior to foreclosure sale, to "redeem" his property from

was $19,000.00 and the delinquent installment amount to $400.00, the borrower at any time before sale could redeem his property and reinstate the loan by making payment of only the sum of $400.00 plus costs. Contrast this right with the so-called "right" which the same borrower has under present mortgage law of redeeming his property at any time within a year after sale by paying the full sum of $15,000.00 plus court costs, counsel fees, interest, taxes and insurance. Which is the more meaningful right - that accorded by present mortgage laws, or that accorded by SB 99. The question answers itself.

BEST COPY AVAILABLE

4. Moreover, the bill provides further protection to the borrower by prohibiting the taking of a deficiency judgment against him, should the proceeds of sale of his property be insufficient to satisfy his obligation.

5. Finally, SB 99 would not supersede or replace present mortgage and foreclosure laws, but would simply provide an alternative procedure which would exist side by side with established mortgage procedures and which would be available on an optional basis. The same situation prevails in California and has for over 50 years.

The most important single feature of Senate Bill 99 is the elimination of the statutory one-year right of redemption from sale. This vestige of "depression jurisprudence" would seem at first blush to provide the mortgagor with a "second chance" to save his property. Statistically, however, the

right of redemption has not been important from the standpoint of the mortgagor; it is almost never exercised. From a study of over 22,000 mortgage foreclosures in states having redemption laws, Bridewell found that the right was exercised in less than 1% of the cases. The problem from the standpoint of the mortgagee has not been with the exercise of the right, but with the simple fact of its existence. The right of redemption effectively kills public participation in the foreclosure sale, since outside purchasers are reluctant to bid in property when they are compelled to wait a year for title. This means that in the usual case the mortgagee has to bid in the property himself and hold it for a full year until the period of redemption expires before he can sell it and recover his investment. Moreover, in the absence of competitive bidding, the full market value of the property is seldom realized with the result that the mortgagor stands little chance of recovering the value of his equity. Speaking of the effect of redemption periods on home financing, Bridewell states:

> "* * * these periods often deprive a potentially worthy prospective homeowner of securing a mortgage loan or prevent him from receiving the most advantageous terms. * * *
>
> "The legal basis for home financing and mortgage lending in general would be greatly improved if these periods of redemption were entirely abolished in all states or made as short as possible."

In truth and in fact, 24 states do not provide for a statutory period of redemption following sale. These include the more important commercial states such as California, New York, Pennsylvania and others.

In concluding, I would like to say a word about the effect

programs cannot be fully realized in states which do not have realistic modern mortgage laws. This was recognized by President Eisenhower in his economic report of January 23, 1957, in which he said:

> "Outmoded foreclosure laws, which add unnecessarily to the risks and costs of mortgage lending should be revised. The states are urged to give their early attention to these matters."

It is notable that the President called for action by the states rather than the federal government. Real property law, including mortgage and foreclosure law, is traditionally and properly within the province of the states. However, unless Montana and other states having outmoded mortgage laws take the initiative and promptly make needed improvements, the federal government may be tempted to intrude further into the field of states' rights.

Senate Bill 99 is manifestly in the public interest and its favorable consideration by this Legislative Assembly is earnestly requested.

BEST COPY
AVAILABLE

H. J. Luxan

BEST COPY AVAILABLE

MONTANA HOME FINANCING ASSOCIATION

MEMBERSHIP ROSTER

American Building & Loan	Helena, Mont.	R. C. Wallace
Big Horn County State Bank	Hardin, Mont.	J. William Smith
Big Timber Bldg. & Loan Assn.	Big Timber, Mont.	Herold Doe
Billings Board of Realtors	Billings, Montana	Richard Lee
Billings State Bank	Billings, Montana	Don A. Wyard
Central Bank of Montana	Great Falls, Mont.	Thomas F. Carbelly
Conrad Bank (The)	Kalispell, Mont.	A. K. Semple, Jr.
Citizens Bank of Montana	Havre, Mont.	Ellen E. Laney
Cooper, J. L. Company	Missoula, Mont.	Donald E. Marr
Daly Bank & Trust Co.	Anaconda, Mont.	Henry P. Murphy
Deer Lodge Bank & Trust Co.	Deer Lodge, Mont.	R. A. Ricco
Deer Lodge Federal Savings & Loan	Deer Lodge, Mont.	
Empire Savings & Loan Association	Bozeman, Mont.	R. D. Smethers
Exchange Stated Bank	Glendive Mont.	George C. Johnson
First Montana Title Ins. Co.	Great Falls, Mont.	Harry H. Schlee
First Federal Savings & Loan	Great Falls, Mont	Paul A. Johnson
First Federal Savings & Loan	Billings, Mont.	
First Federal Savings & Loan	Kalispell, Mont.	
First National Bank	Billings, Mont.	H. E. Kinsley
First National Bank	Glendive, Mont.	T. A. Veshus
First National Bank	Great Falls, Mont.	Scott B. Stratton
First National Bank	Havre, Mont.	Russell Houssels
First National Bank of Dillon	Dillon, Mont.	W. R. Tait
First National Bank & Trust Co.	Helena, Mont.	N. E. Turnquist
First National Park Bank	Livingston, Mont.	
First Security Bank	Glasgow, Mont.	LeRoy J. Whittle
First Western Bank	Great Falls, Mont.	E. C. Joslyn, Jr.
Gallatin Trust & Savings Bank	Bozeman, Montana	Brooke Hartman
Great Falls Federal Svgs & Loan Assn.	Great Falls, Mont.	Raymond Wirth
Great Falls National Bank	Great Falls, Mont.	Herbert
Havre Federal Savings & Loan	Havre, Mont.	
Home Builders Association	Billings, Mont.	H. E. Carpenter
Home Building & Loan	Helena, Mont.	Paul W. Smith
Livingston State Bank	Livingston, Mont.	Claude R. Erickson
Melnick, Louis D.	Billings, Mont.	
Metals [illegible]	Butte, Mont.	Thomas
Midland National Bank	Billings, Mont.	J.
Miners National Bank	Butte, Mont.	Harold Fitts
Missoula Savings & Loan	Missoula, Mont	
Montana Bank	Great Falls, Mont.	J. A. Fred
Prudential Fed. Savings & Loan	Butte, Mont.	J. E. Mont
Richland National Bank	Sidney, Mont.	G. H.
Security [illegible]	Bozeman, Mont.	Carl J.
Security Savings & Loan	Billings, Mont.	Jack F. Dyer
Security Trust & Savings Bank	Billings, Mont.	W. L.
Stockmen [illegible]	Billings, Mont.	Fly
Union Bank & Trust Co.	Helena, Mont.	C. C. Billi
Valley Fed. Savings & Loan	Missoula, Mont.	Robert A.

Make Funds Available

Senate to Consider Bill To Aid Home Building

By Thomas E. Mooney

A bill designed to have "tremendous impact" on the home building economy of Montana will be considered by the Montana Senate in the coming week.

The measure, SB99, would supplement the state's real estate mortgage laws new provisions making trust deeds legal in Montana and thus providing an additional method for the financing of home loans.

Sponsors of the bill contend this would be a "modern approach to home financing" which would "open the door" so that ample funds would be available in this state "on reasonable terms and on a steady basis."

Principal backers of the measure are all the organizations interested in the building and financing of homes in the Treasure State. They have banded together into an organization known as the Montana Housing Association, with H. J. Luxan, Helena attorney, as their counsel, and Clarence Sullivan, Helena banker, as their president.

It is the feeling of the people in the organization that Montana oftentimes is caught in a "squeeze" on home financing, Luxan said. He quoted R. C. Wetherell of Bozeman, representing a savings and loan organization and a member of the association, as showing their growing difficulty in this state in the financing of home loans—principally through the necessity to have mortgages sold to out-of-state investment firms and individuals—because of the increasing demand for more home financing and at the same time difficulty in securing enough Montana investment to finance these homes, due to the more attractive investment offers which can be secured in other investment fields.

Members of the association told the Senate banking and insurance committee that Montana investors are not able to generate and retain sufficient funds to finance all the home building indicated in the state. For this reason, they said, out-of-state financing must be secured to finance the mortgages under the present law.

There are many advantages to invest such funds in other states, and other lines of investment, so Montana many times loses out and the home building industry is hampered, and home buyers are penalized in this state, the committee was told.

Thus, the Montana Homes Association sponsored HB99, known to the group as "The Small Tract Financing Act of Montana." It was introduced by a group of senators headed by Sen. Carl Lehrkind, Jr., R-Gallatin, and containing members from both sides of the aisles.

"There is an increasing risk for investors to do business in this line in Montana," Wetherell said, "because of the less modern and cumbersome foreclosure laws on our statute books. This bill will open the door for ample funds in this field, on a steady basis, in the state."

Under terms of Montana present mortgage foreclosure laws it is necessary in default cases to institute a court suit, pay the costs of such legal action, and take from 15 to 18 months before the investor might recover his funds after the loan is defaulted. Laws of the state also give borrower, even though defaul imminent, a right to retain pos sion for one year after the c suit is initiated.

These things, particularly one- year wait, make it diffi to secure investors willing to chase such mortgages, represe tives of the association say.

The proposed legislation, ever, calls for a third party trustee— to have an interes a mortgage loan. He would a security interest in the loan its lifetime, but in cases of fault the legal processes w be shortened without a court but the home buyer would protected in that he could state the loan at any time be the property was sold simply paying the delinquent installm due.

The latter feature, the spon of the bill feel, is very impor in that it gives the buyer an portunity to reinstate his after being delinquent in a s time and without undue cost dens. The feature, they ad also should appeal to inves because it is aimed at cut down the number of defaults in making Montana home l more attractive as investm features.

Deficiency judgments ag borrowers who default also prohibited in the bill.

Among organizations sup ing the legislation are the A ciation of General Contrac the Montana Savings and L League, the Montana Title A ciation, the State Board of L tors, the VA, PERS and teac retirement systems, the I and the Title Insurance Ass tion.

The sponsors describe the b ers as "virtually everyone has anything to do with hou by financing, construction, or whatever."

BEST COPY AVAILABLE

1963

House
~~SENATE~~ COMMITTEE
Bus. & Industry

Status of Bills

	Number	Senate Committee	Senate Sub-Committee	Sub-Committee Chairmen	Re-referred	Reco mended	Be Concurred In	Be Concurred In As Amended	Killed	Substitute Bill	Printing	General Orders	Third Reading
~~Senate~~ Bill	1						✓						
Senate Bill	47						✓						
Senate Bill	48						✓						
Senate Bill	18							✓					
Senate Bill	97							✓					
Senate Bill	99						✓						
Senate Bill	100						✓						
Senate Bill	113						✓						
Senate Bill	194								✓				
Senate ~~Bill~~	~~47~~								✓				
Senate Bill	216								✓				
Senate Bill	167								✓				
Senate Bill													
Senate Bill													
Senate Bill													
Senate Bill													
Senate Bill													
Senate Bill													
Senate Bill													

BUSINESS & INDUSTRY

Business & Industry met on adjournment, February 15, 1963. Chairman Dykstra called the meeting to order. 14 members were present, one excused.

SENATE BILL 99. Mr. Jack Luxan, attorney at law, Helena, Montana representing the Montana Home Association introduced the proponents appearing for Senate Bill 99. (exhibit A)

Mr. Luxan was the first proponent to present the merits of SB99. See statement of Mr; Luxan attached.

Other proponents to speak in favor of SB99 also presented for the record, a prepared statement. These statements are attached J. F. Ryan, Montana Home Association; F. B. Weed, Montana Title Association; Archie Hindoien, Montana Building Material Dealers' Association; George A. Pirrie, Jr., Montana Building Chapter, Associated General Contractors.

Mr. Luxan stated for the record that the V.A. and F.A.A. are in support of this measure.

Mr. Jean A. Turnage, Representative, Flathead County appeared as opponent to SB 99. Mr. Turnage stated that this measure is based on unsound economic theory with no fiscal responsibility . Mr. Turnage then pointed out the various features of the measure he felt were unwise.

Thenfollowed a question and answer period. The gentlemen then retired from the meeting.

Consideration of SB 99 was tabled until a future date.

HOUSE BILL 340. Motion carried to reconsider HB340. Mr. Beam presented proposed amendment to this measure. Motion made by Bashor, seconded by Beam, House Bill 340 DO PASS AS AMENDED. Motion carried.

There being no further business to come before the committee the meeting was adjourned.

DAN DYKSTRA, CHAIRMAN..

BEST COPY
AVAILABLE

COMMITTEE ON HOUSING AND HOSPITALITY

HOUSE PARTICIPATION

FINANCING IN SUBMITTED BILL
Committee Hearing, February 11, 19[illegible]

Name of Firm or Association	Name and Title of Person
Mont. Mortgage Bankers Association	George Fairfield Counsel.
Montana Wood Products	A L Helmer
Land Title Guaranty Co	E Bob Brown.
The Title Insurance Co	E Bob Brown
Building & Loan League	Clifford M. Smith
Montana Building Congress	
The Associated General Contractors	Geo A. Tim Exec. Mgr
Montana Home Assn.	W J Anderson,
Curran Const. Co., Inc. (Missoula)	J T Curran,
Title Guaranty Co. (Missoula Co.)	Milo K Janeck
J. L. Cooper & Co. - Mssla. (Missoula)	Ray W. Stoddard Asst
Montana Home Assoc.	C E Sellman
Union Bank & Trust Co	C E Sellman
Missoula Chpt. Nat'l Ass'n Home Builders	Donald F. Tomlinson
Tomlinson Constr. Co. Missoula	Donald F Tomlinson

Name of firm or association	Name and title
Mont. Chapter, National Electrical Contractors Association	George Swandal, Jr. Counsel.
Montana Wood Products	A L Helmer, Pres.
Land Title Guaranty Co	E Bob Brown. Asst F
The Title Insurance Co	E Bob Brown Asst F
Building & Loan League	Clifford M Smith Hele
Montana Building Chapter	
The Associated General Contractors	Geo H. Turrill Jr Secy - Mgr.
Montana Home Assn.	W J Anderson, Comm
Curran Const. Co., Inc. (Missoula)	J T Curran, Pres.
Title Guaranty Co. (Missoula Co.)	Milo K Janecek, Pres
J. L. Cooper & Co., - Helena. (Missoula)	Ray W. Stoddard Asst. V.P.
Montana Home Assoc.	C E Wellcome Pre
Union Bank & Trust Co	C E Wellcome V.P.
Missoula Chpt. Nat'l Ass'n Home Builders	Donald F. Tomlinson, Sec
Tomlinson Constr. Co. Missoula	Donald F Tomlinson
Fidelity Real Estate & Dev. Co Inc Missoula	Donald F Tomlinson, pres.
Bestway Builders (Missoula)	Marion J. Illingsley
Wohlberg Constr. Co (Helena)	Carl J. Wohlberg
Southaven, Inc. (Helena)	Carl J. Wohlberg
The City Harding Realty (Helena)	E. B. Harding

BEST COPY AVAILABLE

COMMITTEE ON BUSINESS AND INDUSTRY

HOUSE OF REPRESENTATIVES

APPEARANCES IN SUPPORT OF SB 99
Committee Hearing, February 15, 1963

Name of Firm or Association	Name and Title of Representati
Public Employee's Retirement Syptem	Edward D. Little, Chief Accountant
Helena Real Estate Assocy	James P. Brennan
Montana Title Assn	F Allred, U.S. (Hon
Helena Abst + Title Co	F Allred U.S. Dirgr (
GR FALLS NAT'L BANK	H. F. McCULLA, VICE PRES
Lumbermens Inv. Corp & Co.	Earl A Hunt
Home Builders Assoc of Great Falls	Lee W. Hunt P
Welch Anderson Ins Co	James McCormick
Security Savings & Loan Assn	J F Ryan Vice Pres (Bill
Montana Home Assn	J F Ryan Secy

BEST COPY
AVAILABLE

MONTANA
Building Material Dealers Association, Inc.
MBMDA INC.
SUITE 16,
PROFESSIONAL BLDG

OFFICERS
ARCHIE HINDOIEN
President
State Lumber Co.
Great Falls
CHARLES R. HARDING
Vice-President
Home Lumber Co.
Whitefish
A. A. KIND
Treasurer
Linder-Kind Lumber Co.
Helena
R. V. PETERSEN
Ass't. Treasurer
Peterson Lumber Co.
Helena
H. AGNES ZIPPERIAN
Secretary

EXECUTIVE COMMITTEE
ARCHIE HINDOIEN
Chairman
C. W. SORENSON
L. R. ALDRICH, JR.
CHARLES R. HARDING
J. P. CONNOLLY

DIRECTORS
L. R. ALDRICH, JR.
Billings
DEAN BEALL
Anaconda
J. P. CONNOLLY
Great Falls
CHARLES R. HARDING
Whitefish
ARCHIE HINDOIEN
Great Falls
CHARLES C. LOVELL
Missoula
WILLIAM V. OGLE
Bozeman
C. W. SORENSON
Miles City
RAY WARHANK
Rudyard

NATIONAL DEALER-DIRECTOR
EDWARD M. CHAUNER
Gallatin Lumber Co.
Bozeman

NATIONAL EXECUTIVE COMMITTEEMAN MRLDA DISTRICT NO. 5
R. BOURKE MacDONALD
Largey Lumber Co.
Butte

February 11, 1963

Honorable Dan Dykstra, Chairman
Business & Industry Committee
House of Representatives
Montana State Legislature
Helena, Montana

Dear Representative Dykstra:

Senate Bill No. 99, which your Committee is presently considering, is of the utmost importance to our Industry. As suppliers of Building Materials, we are vitally affected by the volume of home construction in our State.

Our antiquated mortgage laws tend to keep many mortgage investors out of our state as they prefer to put their funds in areas not hampered as we are. The passage of this bill would attract these investors and the availability of mortgage money would be stabilized. The stabilization of the flow of mortgage money into our state would result in stabilizing the home construction industry.

We feel passage of Senate Bill No. 99 would be of great benefit to the light construction industry of which we are an integral part as suppliers of building materials. We, therefore, urge that you give careful consideration to this bill and recommend passage of it.

Very truly yours,

Archie Hindoien

Archie Hindoien, President

MONTANA HOME ASSOCIATION
Statement of J. F. Ryan
In Support of
Senate Bill #99

Mr. Chairman:
Members of the Business and Industry Committee:

Gentlemen:

I am J. F. Ryan from Billings, Montana. I am Sec'y of and speaking on behalf of the Montana Home Association. For the past four years, I have been in the mortgage loan department of the Security Savings & Loan Association of Billings, and at the present time am the Vice President and Managing Officer of the Association.

From 1948 through 1958 I owned and managed my own general contracting firm, and during this time I built, sold, and arranged financing for approximately 200 single family dwellings ranging in price from ten to fifty thousand dollars.

I am a charter member and past president of the Home Builders Association of Greater Billings. I am a member of the National Association of Home Builders and served as a Montana representative of its Economic Council for four years.

I am an Associate Member of the Billings Board of Realtors, and for several years was a member of the Billings Contractors Council.

Except for two years in the army during World War II, I worked from 1939 to 1948 for the Bloedorn Lumber Company either as Ass't Manager or Manager of several of their urban retail lumber yards in Colorado, Wyoming, Nebraska and Montana.

I have been directly or indirectly connected with home financing for over 21 years, 18 of which have been in Montana. In this time our economy has grown very slowly and has never reached its true potential. In my opinion we will never reach our potential unless we keep pace with other states in matters of finance.

Nationally, construction is the second largest contributing factor to our total economy, and its livelihood depends

on the availability and level flow of long term mortgage financing. Montana's lumber, copper, gypsum, cement, and transportation industries are directly effected, as are all the people in the construction trades, the Real Estate Brokers, Abstracters, Attorneys, and retailers. If you project the construction dollar to its ultimate you will find every man, woman and child effected in one degree or another. If we expect to see Montana grow and attract new industry, we must provide an adequate steady flow of long term mortgage money at a reasonable cost. No industry will come to this state without first making a survey of living conditions for its employees. Presently we are spending millions of dollars a year to educate our young people only to see them leave Montana to find work in states who have had the foresight to provide jobs for them by attracting new industry.

Since the end of World War II we have experienced many changes in our economy and we in Montana have had many periods of tight money. There have been times when it was next to impossible to obtain long term mortgage money to finance home sales and construction. There most certainly will be tight money markets in our future and we must look to the cause if we are to find the cure.

Nation-wide and, I believe, state-wide, the Savings & Loan Associations make from forty to forty-five per cent of all residential loans. Savings & Loan Associations have no source of funds other than savings accounts and therefor, their real estate loans cannot aggregate more than the total of their savings accounts, less their required reserves and liquidity. Annually, savings & Loan Associations can only loan what they receive in new savings and in loan repayments.

Oddly enough, in periods of tension or depression the savings aggregate builds up rapidly while during the same time demand for real estate loans fall off. When tension has eased the savings dollars are withdrawn for re-entry of the stock market and for spending of all sorts. The recovery period then sees the demand for long term real estate loans grow by leaps and bounds, and at the same time the supply is shortened.

The only other major source of funds for real estate loans comes from the East where large savings banks and insurance companies accumulate a more uniform cash flow, and they look for safe real estate mortgage investments throughout the rest of the country. When the demand is high, these

investors look to states having up to date mortgage laws, and I have seen the time when most of these investors would not come to Montana because of our antiquated, inequitable foreclosure laws. The present law unnecessarily increases the risk and cost of doing business in Montana.

Roy Wenslick, a noted St. Louis real estate analyst, conducts nation-wide real estate and mortgage surveys. In a survey conducted in 1960, he pointed out that Montana had the fourth highest foreclosure costs in the nation. The highest was Utah, who at their last legislature amended their laws to include trust deeds, very similar to the trust indenture in Senate Bill No. 99. As more states revise their laws, the more difficult it will be for Montana to attract money in the future.

There is no question in my mind that the cause of high cost inadequate mortgage funds in Montana is our present mortgage law. If we are to make Montana an attractive place for industry and its people to live, we must find a cure to the lack of long term mortgage funds and compete with other states in terms of finance.

In my opinion, and in the opinion of the Montana Home Association, and the Montana Council on Housing, the cure lies in Senate Bill No. 99.

I strongly urge that you label Senate Bill No. 99 - DO PASS.

Thank you,

J. F. Ryan

BEST COPY AVAILABLE

BUSINESS & INDUSTRY

Business & Industry met on adjournment February 20, 1963. Chairman Dykstra called the meeting to order. 14 members were prese 1 absent.

SENATE BILL 18. Chairman Dykstra informed the committee that he had received a proposed amendment to SB 18, which would include the 'public accountants' in this measure. After a short discussion motion made by Casey, seconded by East that the amendment be accepted. Motion carried.

Motion made by East, seconded by Casey that Senate Bill 1 BE CONCURRED IN AS AMENDED. Motion carried.

SENATE BILL 99. Small tract financing act. Chairman Dyks informed the committee that he had received letters from V.A. and F.A.A. supporting this measure.

Regan moved that Senate Bill 99 BE CONCURRED IN. Seconde by Casey. Motion carried by a vote of 11-2.

SENATE BILL 194. Mr. Dykstra read to the committee a lett from R. D. Corette correcting a portion of his previous testimony.

Motion made by Beam, seconded by Smiley, that Senate Bill BE NOT CONCURRED IN. Motion carried by a vote of 9-4.

SENATE JOINT RESOLUTION 4. Resolution requesting that federal banks pay the same taxes as state banks in the state of Monta Motion made by Beam, seconded by Good, that SJR4 BE NOT CONCURRED IN. Motion carried. 1 member abstained from voting.

There being no further business to come before the committee the meeting was adjourned.

DAN DYKSTRA, CHAIRMAN...

BEST COPY AVAILABLE

Attendance in adjoining state—waiver of tuition.

Whenever elementary pupils residing in Montana are approved for attendance in an elementary school in an adjoining state; and whenever elementary pupils in an adjoining state are approved for attendance in an elementary school in Montana, the above schedule of tuition payments may be waived and payments arrived at on a reciprocal basis with the state involved. The state superintendent of public instruction is hereby authorized to negotiate with the state superintendent of public instruction of each state involved in arriving at tuition payments, which may either be on a per pupil basis of a flat amount or on an actual cost basis."

Approved March 5, 1963.

CHAPTER 177

An Act Authorizing the Optional Use of Trust Indentures as Security Instruments in the Financing of Small Tracts Embracing Three Acres of Land, or less; Providing for the Conveyance of Title to a Trustee to to Secure the Performance of an Obligation and for Re-conveyance Upon Performance; Conferring a Power of Sale Upon the Trustee Under a Trust Indenture and Prescribing the Time and Manner in Which Such Power May Be Exercised; Providing for the Sale of the Property at Trustee's Sale in the Event of Default; Prescribing the Form of Notice of Sale and Providing for the Recordation, Mailing, Posting and Publication of Notice of Sale; Providing for Trustee's Deeds and the Form and Effect Thereof; Providing for the Disposition of the Proceeds of Sale; Disallowing Deficiency Judgment in Certain Cases; Providing for Possession Following Sale; Defining the Fees and Expenses Chargeable to the Grantor of a Trust Deed; Providing for Discontinuance of Foreclosure by Advertisement and Sale; Relating to the Applicability of Mortgage Laws to Trust Indenture Transactions; Amending Sections 93-6005, 93-6006, and 93-6007, R. C. M. 1947, relating to Sales of Real Estate Under Powers of Sale in Mortgages and Rights of Redemption, to Exclude Therefrom Trust Indentures as Defined in This Act;

and Providing a Short Title, a Severability Clause and an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Short title.** This act may be cited as the "Small Tract Financing Act of Montana." Title.

Section 2. **Declaration of policy.** Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than three acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than three acres as hereinafter provided. Policy to permit use of trust indentures—home financing. Limit—3 acres.

Section 3. **Definitions.** As used in this act, unless the context requires otherwise: Definitions.

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee. "Beneficiary."

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation. "Grantor."

(3) "Trust Indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary. "Trust indenture."

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest. "Trustee."

(5) "Three Acres" means three acres of land. Where the trust indenture states that the real property involved does not exceed three acres, such statement shall be binding upon all parties and conclusive as to compliance with "Three acres."

the provisions of this act relative to the power to make a transfer, trust, and power of sale.

Transfers in trust as security.

Section 4. **Authorization of trust indentures.** Transfers in trust of any interest in real property of an area not exceeding three acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

Unlawful to substitute for existing mortgage.

Power of sale.

Foreclosure.

Qualifications of trustee.

Section 5. **Qualifications of trustee.** (1) The trustee of a trust indenture under this act shall be:

(a) An attorney who is licensed to practice law in Montana; or

(b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

Appointment—successor trustee.

(2) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the

time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

Reconveyance upon performance.

Section 6. **Reconveyance upon performance; liability for failure to reconvey.** Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

Failure to reconvey—liability.

Time limitation—foreclosure.

Section 7. **Time within which foreclosure must be commenced.** The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

Foreclosure by advertisement and sale.

Section 8. **Foreclosure by advertisement and sale.** (1) The trustee may foreclose a trust indenture by advertisement and sale under this act if:

Recording.

(a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

Default.

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust indenture, or by their successors in interest, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

Notice of sale.

(c) The trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

41

Names. (i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

Description. (ii) A description of the property covered by the trust indenture;

Mortgage record. (iii) The book and page of the mortgage records where the trust indenture is recorded;

Default. (iv) The default for which the foreclosure is made;

Amount owing. (v) The sum owing on the obligation secured by the trust indenture;

Election to sell. (vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;

Date of sale. (vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 A. M. and 4:00 P. M., Mountain Standard Time;

Place of sale. (viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

Manner of sale. (2) A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

Notice of sale—mailing, posting, publication. Section 9. **Notice of sale to be mailed, posted and published.** (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) The grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) Each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

42

(iii) Each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) Any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) Any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold;

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

Affidavits.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting and publication showing compliance with the requirements of this section.

Sale to highest bidder.

Trustee cannot bid.

On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale.

Postponement of sale.

The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

Payment in cash.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall

43

Trustee's deed.

execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to re-sell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

Re-sale.

Refusal to pay—liability.

Recital—trustee's deed.

Section 10. **Trustee's deed.** (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

Recording—recitals as prima facie evidence.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (2) of Section 9 of this act, shall be prima facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

Effect of conveyance.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

Purchaser entitled to possession on 10th day.

Seciton 11. **Possession.** The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

Default—right to cure prior to sale.

Section 12. **Discontinuance of foreclosure proceedings when entire amount of default paid.** Whenever all or a

portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be cancelled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book

Effect of payment of amount in default.

Cancellation of recorded notice of sale.

Liability.

Recording—cancellation.

and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is cancelled.

Disposition of proceeds.

Section 13. **Disposition of proceeds of sale.** The trustee shall apply the proceeds of the trustee's sale as follows: (1) To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

Costs, expenses, fees.

Obligation.

(2) To the obligation secured by the trust indenture;

Surplus.

(3) The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

Deficiency judgment prohibited.

Section 14. **Deficiency judgment not allowed.** When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

Recording—request for copy of notice of sale.

Section 15. **Requests for copies of notice of sale.** At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection (1) of section 9 of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page

where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

Cross reference.

Effect.

Section 16. **Trustee's fees and attorney's fees.** Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and shall shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of Section 12 of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed $150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

Limitation on fees.

Section 17. **Trust indenture deemed to be mortgage on real property.** A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

Trust indenture deemed mortgage.

Section 18. Section 93-6005, R. C. M. 1947, is amended to read as follows:

Amending clause.

"93-6005. **Sale of real estate under power in mortgage —posting notices.** Hereafter real estate sold under a power of sale given and contained in a mortgage of real estate, *except in a trust indenture as defined in the 'Small Tract Financing Act of Montana'*, shall be advertised for sale at least thirty days before the date fixed for such sale, in a newspaper in the county in which such real

Power of sale in mortgage.

Exception.

Advertisement for sale—publication.

4X

estate is situated, and in case there is no newspaper printed and published in said county, then by posting notices in at least five conspicuous places in said county, one of which notices must be posted on the land so advertised for sale. Two other of said notices must be posted in conspicuous places in the township in which said land is situated, one in such conspicuous place in said county as will be most likely to give notice to all persons interested in said sale, and one of said notices must be posted in a conspicuous place at the front door of the county courthouse of the county in which said land is located, and in addition to the said publication or posting, as hereinbefore provided, notices of such sale must be served personally at least thirty days before the date fixed for such sale upon the occupant of the property so advertised for sale, and upon the mortgagor if within the state of Montana, and upon every person or persons having or claiming an interest of record in the said real estate so advertised for sale who may be found within the said state of Montana."

Posting.

Personal service.

Amending clause.

Section 19. Section 93-6006, R. C. M. 1947, is amended to read as follows:

Redemption.

"93-6006. **Rights of redemption applicable.** All of the rights, powers, and privileges, concerning the redemption from sales of real estate applicable to the sales of real estate under foreclosure proceedings or sales under execution, shall be granted and allowed to sales of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state *except to sales of real estate under and by virtue of the power of sale conferred upon a trustee under a trust indenture as defined in the 'Small Tract Financing Act of Montana'.*"

Exception.

Amending clause.

Section 20. Section 93-6007, R. C. M. 1947, is amended to read as follows:

Allowance of attorneys' fees.

"93-6007. **Allowance of attorney's fees—petition and notice.** If the mortgagee shall demand attorney's fees in case of the sale of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state, *except in case of the sale of real estate by virtue of a power of sale conferred upon a trustee under a trust indenture as defined in the 'Small Tract Financing*

Exception.

Act of Montana', he shall petition the district court of the county in which said real estate, or any part thereof, may be situated to fix the amount of such attorney's fee, and a copy of such petition shall be served upon all parties having or claiming an interest of record in the property to be sold, or such of them as may be found within the state, which said copy of said petition must be served at least ten days before the day fixed for hearing, and notice of the time and place of such hearing shall be served at the same time as the copy of said petition is served; such petition shall be acted upon by the said district court before the notice of sale by publication or posting, as hereinbefore provided for, shall be given."

Petition to court to fix.

Service.

Section 21. **Severability clause.** It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Severability.

Section 22. **Effective date.** This act is effective on its passage and approval.

Effective immediately.

Approved March 5, 1963.

CHAPTER 178

An Act to Amend Section 53-122, R. C. M. 1947, Relating to Registration Fees of Motor Vehicles and the Disposition Thereof By Providing for the Division of License or Registration Fees Between The County and Incorporated Cities and Towns Within the County in a Pro Rata Manner; and Restricting the Use of the Monies by Cities, Towns, and Counties.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 53-122, R. C. M. 1947, is amended to read as follows:

Amending clause.

"Section 53-122. **Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles**

Registration—motor vehicles.

49